

REMARKS

This paper responds to the Office Action mailed on February 5, 2009. Claims 1, 15, 22, 26, 28, and 39-42 are amended. Claims 21, 29, 30, and 35-38 remain canceled and no claims are added. As a result, claims 1-20, 22-28, 31-34, and 39-42 remain pending in this application.

§ 112 Rejection of the Claims

Claims 1, 8, 15, 28 and 39-42 were rejected under 35 U.S.C. § 112, first paragraph, as allegedly lacking adequate description or enablement. In short, the Examiner asserts that “Applicant's specification does not describe more than one count of failed transactions.” *Office Action*, page 3.

Claim 1, recites, *inter alia*:

...updating a record associated with the failed transaction that is not completed by the buyer, the updating the record including incrementing a first count of failed transactions not completed by the buyer for the reason that the buyer failed to send a payment to the seller; and

communicating a user interface to a client machine of a seller, the user interface including a second count of failed transactions not completed by the buyer, the second count including the first count of failed transactions not completed by the buyer for the reason that the buyer failed to send a payment to the seller.

Claim 1 is supported at least, for example, by the specification as-filed by pages 10, line 10 to page 11, line 19, which states, *inter alia*,

NPB user ID column 306 stores user IDs of buyers who did not follow through on a transaction related to the items identified in item no. column 302. Reasons for failed transaction column 308 stores reasons why the transaction failed that may be given by a seller. For example, ***reasons may include a buyer failing to purchase an item or providing a fraudulent check to pay for the item.***

...

Referring to FIG. 4, nonpaying bidders table 400 includes a NPB user ID column 402, item no. column 404, ***valid warning count 406***, NPB tick column 408, reason for NPB tick column 410, and suspended status column 412.

...

Valid warning count column 406 stores a count value on the number of times the NPB received a warning for being a "non-paying bidder" or for failing to complete a transaction. NPB tick column 408 stores the number of times the NPB has been involved in a failed transaction in which the NPB was at fault. Reason for NPB tick column 410 stores the reasons for the NPB tick. Suspended status column 412 stores the status of the NPB to participate on the network facility. For example, after a certain number of NPB ticks, the NPB can be suspended from participating in an on-line auction on the network-based facility. (Emphasis added.)

Because support for both "the first count" and "the second count" (see, e.g., the "valid warning account column 406" and "the NPB tick column 408") are found in the specification, the present rejection of claim 1 must be withdrawn.

Further, claims 8, 15, and 28 were rejected for the same reason. Applicants aver that these claims are supported at least by the same portions of the specification. Additional support may be found, for example, in Figure 14 of the specification as filed.

Claims 39-42 were each rejected by the Examiner for allegedly lacking adequate description or enablement for "a third count."¹ Although Applicants believe sufficient support exists within the specification for "a third count," in order to advance prosecution Applicants have amended each of claims 39-42 to eliminate the reference to a third count. Therefore, Applicants respectfully request the Examiner withdraw the rejection of claims 1, 8, 15, 28 and 39-42 under 35 U.S.C. §112, first paragraph.

§ 101 Rejection of the Claims

Claims 1-7 were rejected under 35 U.S.C. § 101 as allegedly directed to non-statutory subject matter. Specifically, the Examiner noted that "in the claimed steps which recite apparatus may not be involved in the performance of the step and therefore the method may not be specifically tied to that apparatus." *Office Action*, page 5.

¹ *Office Action* at 3.

The United States Court of Appeals for the Federal Circuit (CAFC) recently held that the machine-or-transformation test is the sole criterion for patent eligibility under § 101. The CAFC additionally stated that,

The Supreme Court has enunciated a definitive test to determine whether a process claim is tailored narrowly enough to encompass only a particular application of a fundamental principle rather than to pre-empt the principle itself. *A claimed process is surely patent-eligible under § 101 if: (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing.* (*In re Bilski*, 545 F.3d 943, 954). Emphasis added.)

With regard to the second prong of the *Bilski* test, the *Bilski* court clarified how the transformation prong can be applied. The CAFC cited to the *Abele* court² approvingly when it stated,

We further note for clarity that *the electronic transformation of the data itself into a visual depiction in Abele was sufficient; the claim was not required to involve any transformation of the underlying physical object that the data represented. We believe this is faithful to the concern the Supreme Court articulated as the basis for the machine-or-transformation test, namely the prevention of pre-emption of fundamental principles.* (*Bilski* at 963. Emphasis added.)

Applicants' claim 1 recites, *inter alia*,

receiving submission of a complaint at a network-based facility...

at the network-based facility, updating a record associated with the failed transaction that is not completed by the buyer...; and

communicating a user interface to a client machine of a seller....

The Examiner asserts that:

the claimed steps which recite apparatus may not be involved in the performance of the step, and therefore the method may not be specifically tied to that apparatus. For example, "facilitating submission of a complaint to the network-based facility" may be accomplished by assisting someone in entering of information. In this case, the step of "facilitating" would consist of a person

² *In re Abele*, 684 F.2d 902 (CCPA 1982).

instructing another person on how to enter information, and would not necessarily be tied to another statutory class.³

Claim 1 meets the transformation test of *Abele* as the claimed method includes, “updating a record ...” and “communicating a user interface to a client machine of a seller” where the transaction (or a record of the transaction) is the data being transformed. The update (or transformation) of the data includes “incrementing a first count of failed transactions not completed by the buyer for the reason that the buyer failed to send a payment to the seller,” as recited in claim 1. This data is transformed into a visual depiction in the user interface communicated to the client machine of the seller. Claim 1 therefore meets the transformation prong of *Bilski*.

Because independent claim 1, from which claims 2-7 depend, is specifically tied to an apparatus (i.e., the network-based facility and a client machine), the present rejection is overcome.

§ 103 Rejection of the Claims

Claims 1, 4-5, 7-8, 11-12, 14-15, 18-19, 24-25, 27-28 and 39-40 were rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Publication No. 2004/0059596 by Vaidyanathan et al. (*Vaidyanathan*) in view of U.S. Patent No. 6,598,026 to Ojha et al. (*Ojha*), in view of U.S. Patent No. 6,535,856 to Tal (*Tal*), and further view of “*The Feedback Forum*.” Since a *prima facie* case of obviousness has not been properly established, Applicants respectfully traverse the rejection.

The recent U.S. Supreme Court decision of *KSR v. Teleflex* provides a tripartite test to evaluate obviousness.

A rationale to support a conclusion that a claim would have been obvious is that ***all the claimed elements were known in the prior art*** and one skilled in the art could have combined the elements as claimed by known methods ***with no change in their respective functions***, and the combination would have yielded nothing more than predictable results to one of ordinary skill in the art. (*See KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 U.S.P.Q.2d 1385 (2007)). Emphasis added.)

³ Office Action at 5.

Applicants will show that the cited references, either singly or in combination, neither teach nor suggest all limitations of Applicants' claimed elements.

As with the prior Office Action (mailed September 8 2008, the Examiner again asserts that *Ojha* discloses⁴ Applicants' claimed element of "incrementing a first count of failed transactions not completed by the buyer for the reason that the buyer failed to send a payment to the seller." As discussed in the response filed November 10, 2008:

In contrast, the above from [*Ojha*] relates a value indicative of a buyers reputation that is based on *non-binding* or frivolous bids. In view of the [then] amendments to claim 1, a non-binding bid could hardly be suggestive of "*a first count of failed transactions not completed by the buyer for the reason that the buyer failed to send a payment to the seller*" because a non-binding bid carries no obligation to "*send a payment to the seller.*"

Because the bids of *Ojha* are non-binding, they do not constitute a transaction. A transaction where a buyer later does not send payment for a non-binding bid is not a failed transaction as no transaction has been formed.

The Examiner relies exclusively on *Tal* to teach the elements of claim 1⁵ that recite:

communicating a user interface to a seller, the user interface including a second count of failed transactions not completed by the buyer, the second count including the first count of failed transactions not completed by the buyer for the reason that the buyer failed to send a payment to the seller.

The Examiner asserts that *Tal* teaches that "[t]he complaints are indexed according to that reason [for the complaint about a buyer], and are maintained in a database and are available for viewing by other parties."⁶ Actually, *Tal* merely discusses:

As mentioned above, all defaults and disputes remain in the database ***unless cured in the given time***. The record of defaults and disputes are indexed according to parties involved, type of transaction (including SIC codes or similar identifying codes), ***type***

⁴ See, e.g., *Office Action*, Page 7, lines 1-4.

⁵ *Office Action*, Page 7, lines 10-12, *et seq.*

⁶ *Office Action* at 7.

of dispute or default (e.g. late payment, late delivery, short delivery, non-payment, delivery of defective goods, incompleteness of services, etc.) All users (or users who have paid for the privilege) have access to the database of disputes and defaults and can use that information when deciding whether to deal with another user of the system. Since the information in the database is updated in real time, the database provides a dynamically updated *credit rating system* which can be used by members *to dynamically regulate commerce among members and to dynamically enforce payment of open accounts.* (Col. 5, lines 32-46.) (Emphasis added.)

As recited by *Tal*, *Tal* merely includes a credit rating system. In contrast to the claims, the system of *Tal* does not include a count based on a number of failed transactions; it merely tracks currently uncured transactions. Thus, *Tal* does not record previous failed transactions.

The Examiner asserts that the *Feedback Forum* teaches or suggests “a scoring mechanism for summarizing the various failed transactions.”⁷ The feedback forum described by *Feedback Forum* provides the following abilities to users:

1. See Feedback about an eBay User
...
2. Leave Feedback about an eBay user
...
3. Review Feedback Others Have Left About You
...
4. Review Feedback You Have Left About Others
...
5. Make Feedback Changes Public or Private
(Pages 1-2.)

The feedback provided to the feedback forum, however, is not limited to failed transactions.

Feedback Forum discusses:

The Feedback Rating system is easy. You receive:
+ *1 point* for each *positive* comment
0 points for each *neutral* comment
-*1 point* for each *negative* comment (Negative comments can *only be left by the winning high bidder [buyer] and seller in an auction.*
Also, if a comment is not about an eBay transaction, it is not counted.) (Page 1.) (Emphasis added.)

⁷ Office Action at 8.

As such, *Feedback Forum* relates to an online reputation, and no failed transactions need to have occurred to use the feedback system. While a failed transaction may result in a -1 feedback from another eBay user, merely having a negative aggregate feedback score is not the same as “a second count of failed transactions not completed by the buyer” as recited in claim 1. Further, and for at least the same reasons, the scoring system of *Feedback Forum* does not provide “a first count of failed transactions not completed by the buyer for the reason that the buyer failed to send a payment to a seller” as recited in claim 1. As such, the present rejection of claim 1 must be withdrawn.

Further independent claims 8, 15, and 28, as amended, each have limitations similar to claim 1 and are asserted to also be allowable for at least the same reasons. Claims 2-7, 9-14, 16-16-20, 22-27, 31-34, and 39-42 depend either directly or indirectly from claim 1, 8, 15, or 28 and are allowable for at least the same reasons. Further, these dependent claims may each be patentable for their own limitations.

Claims 2, 3, 6, 9, 10, 13, 16, 17, 20, 22, 23, 26, and 31-34 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Vaidyanathan, Ohja, Tal*, and *Feedback Forum* further in view of eBay’s website on October 14, 1999 (*eBay*). However, *eBay* fails to make up for any of the deficiencies not found in *Vaidyanathan, Ohja, Tal*, and *Feedback Forum*. Therefore, since each of claims 2, 3, 6, 9, 10, 13, 16, 17, 20, 22, 23, 26, and 31-34 depend from either claim 1, 8, 15, or 28, they too are allowable for at least the same reasons.

CONCLUSION

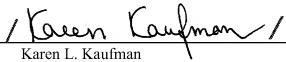
Applicants respectfully submit that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned representative at (408) 278-4051 to facilitate prosecution of this application.

If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

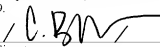
SCHWEGMAN, LUNDBERG & WOESSNER, P.A.
P.O. Box 2938
Minneapolis, MN 55402
(612) 373-6900

Date 03 June 2009

By 
Karen L. Kaufman
Reg. No. 57,239

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 3rd day of June, 2009.

Chris Bartl
Name


Signature